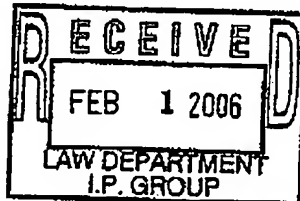UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Martha Ann Finnegan, Esq.
Cabot Corporation
157 Concord Road
Billerica, MA 01821-7001

RECEIVED FEB 1 2006 LAW DEPARTMENT I.P. GROUP

COPY MAILED

JAN 27 2006

OFFICE OF PETITIONS

In re Application of
Kitchell, et al.
Application No. 10/083,657
Filed: February 25, 2002
Attorney Docket No.0I017CIP

:
:
:
:
:

ON PETITION

This is a decision on the petition under 37 CFR 1.181 filed on January 19, 2005, to withdraw the holding of abandonment in the above-cited application.

The petition is **DISMISSED**.

The above-identified application became abandoned for failure to reply to the non-final Office action mailed May 4, 2005, which set a shortened statutory period for reply of three-months from its mailing date. No response was received within the allowable period, and the application became abandoned on August 5, 2005. A Notice of Abandonment was mailed on December 30, 2005.

Petitioner argues that a reply the non-final Office action was transmitted via facsimile on August 3, 2005, and received by the Office. As evidence of the same, petitioner provides a copy of the certificate of transmittal under 37 CFR 1.8 noting twelve pages of an amendment sent on August 3, 2005, and a copy of the transmission sheet indicating that 12 pages were transmitted to the USPTO main facsimile.

The evidence is noted, but is lacking in one respect. Further to this point, Section 512 of the *Manual of Patent Examining Procedure* provides, in pertinent part, that

> 37 CFR 1.8(b) permits a party to notify the Office of a previous mailing, or transmitting, of correspondence when a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence. In the event that correspondence may be considered timely filed because it was mailed or transmitted in accordance with 37 CFR 1.8(a), but was not received in the Office after a reasonable amount of time has elapsed, (e.g., more than one month from the time the correspondence was mailed), applicant is not required to wait until the end of the maximum extendable period for reply set in a prior Office action (for the Office to hold the application abandoned) before informing the Office of the previously submitted correspondence. Applicant may notify the Office of the previous mailing or transmission and supply a duplicate copy of the previously mailed or transmitted correspondence and a statement attesting on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the person signing the statement did not sign the certificate of mailing, then the person signing the statement should explain how they have firsthand knowledge of the previous timely mailing or transmission. Such a statement should be filed promptly after the person becomes aware that the Office has not received the correspondence.

In re Application of Kitchell, et al.   Page
10/083,657

The record reflects that the subject certificate under 37 CFR 1.8 was signed by Kim Blum, but
that no statement of personal knowledge regarding the timely transmission of the amendment
accompanied the petition document. It is further noted that the petition document did not explain
how Mr. Kilyk—who signed the petition document—had firsthand knowledge of the
transmission. The evidence provided with the petition is, therefore, insufficient. The petition is
dismissed, accordingly. Any renewed petition filed must be accompanied by a statement from
Ms. Blum or from Mr. Kilyk that complies with the guidance cited in MPEP § 512 cited above.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
                     United States Patent and Trademark Office
                     Box 1450
                     Alexandria, VA 22313-1450

By facsimile: (571) 273-8300
                     Attn: Office of Petitions

Telephone inquiries regarding this decision should be directed to the undersigned (571) 272-3222.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

TOTAL P.03

PAGE 8/22 * RCVD AT 2/14/2006 9:29:48 AM [Eastern Standard Time] * SVR:USPTO-EFXRF-6/26 * DNIS:2738300 * CSID:5404281721 * DURATION (mm-ss):08-12